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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/193,989	11/18/1998	JOHN REXROAD	CUPI-15	2674
26948	7590	01/30/2006	EXAMINER	
ELLIS & VENABLE, PC 101 NORTH FIRST AVE. SUITE 1875 PHOENIX, AZ 85003			SALVATORE, LYNDA	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/193,989	Applicant(s) REXROAD, JOHN	
	Examiner Lynda M. Salvatore	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 5 is/are rejected.
- 7) ☒ Claim(s) 3 and 6-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's request for continuing examination (RCE), amendment and accompanying remarks filed 11/10/05 has been fully considered and entered. Claims 1-3,6, 8 and 11 have been amended as requested. Applicant's amendment to claim 1 is not found patently distinguishable over the prior art made of record and Applicant's arguments are not found persuasive for reasons set forth herein below.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-2 and 4-5 stand rejected under 35 U.S.C. 102(b) as being anticipated by Rexroad et al., US 5,582,266 for reasons set forth in section 3 of the Final Office Action.

Applicant amended claim 1 to recite "dried, such that said yarn reduces in length up to a point where strain is imposed on said yarn by said frame". Applicant argues that the prior art of Rexroad et al., teach shrinking nylon yarns with a treating process whereas the instant invention is directed to a nylon yarn that shrinks to a point where an outside force imposes a strain on yarns. As such, Applicant argues that the nylon yarn of Rexroad et al., is not the same as the water soluble, high shrinkage yarn of the instant invention. This argument is not found persuasive.

With respect to Applicant's newly added claim limitations, it is the position of the Examiner that Applicant is attempting to claim a future property of the water soluble yarn. Applicant's recites in claim 5 that the net is installed prior to shrinkage. Thus, it appears that Applicant's final product only comprises yarns, which are "capable" of exhibiting high shrinkage

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when exposed to water, and subsequently dried. As presently recited, the claimed water soluble yarn only exhibits the claimed high shrinkage rates *when* wetted with water and “dried such that said yarn reduces in length up to a point where strain is imposed on said yarn by said frame”. Said limitation is not considered a positive limitation in any patentable sense since it depends upon the future use, exposure to certain conditions and/or placement of the net system. For examination purposes only the positive structural and/or chemical features will be given patentable weight.

Recall, Rexroad et al., disclose a safety and debris net system. Rexroad et al., discloses in the background of the invention, dipping nylon yarns in a solution that causes shrinkage. A plurality of C-ring fasteners are provided (col 2, 40); it should be noted that the Examiner is equating Rexroad's C rings to the adjustment bolts of the present invention. As shown in Figure 3, a frame surrounds the netting.

With specific regard to the shrinkage limitations, the Examiner maintains that the dipped nylon yarns disclosed in the background of Rexroad et al., presently meet the limitation of a high shrinkage yarn.

With specific regard to the water soluble limitation, absent a teaching and/or limitations to a specific yarn material (e.g. polyvinyl alcohol), the yarn materials taught by Rexroad et al., are considered “water soluble” by the Examiner until explicitly evidenced otherwise.

With respect to claim 2, Rexroad et al., explicitly teach a net which is a mesh structure having first and second elongate members intersecting at spaced points to define a matrix of interconnecting members which define the mesh structure (Col. 2, 35-40). As such, it is the

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position of the Examiner that the mesh structure defined by Rexroad et al., presently meets the limitations of providing a net with warp and weft strands.

Allowable Subject Matter

4. For reasons previously set forth in last Office Actions, claims 3 and 6-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M. Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 23, 2006

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